

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON STATE ADMINISTRATION**

**Call to Order:** By **CHAIRMAN DEBBY BARRETT**, on February 7, 2003 at 8 A.M., in Room 455 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Debby Barrett, Chairman (R)  
Rep. Dee Brown, Vice Chairman (R)  
Rep. Larry Jent, Vice Chairman (D)  
Rep. Norman Ballantyne (D)  
Rep. Arlene Becker (D)  
Rep. Sue Dickenson (D)  
Rep. Carol Gibson (D)  
Rep. Daniel S. Hurwitz (R)  
Rep. Hal Jacobson (D)  
Rep. Larry Lehman (R)  
Rep. Ralph Lenhart (D)  
Rep. Alan Olson (R)  
Rep. Bernie Olson (R)  
Rep. Don Roberts (R)  
Rep. Clarice Schrumpf (R)  
Rep. Frank Smith (D)  
Rep. Pat Wagman (R)  
Rep. Cindy Younkin (R)

**Members Excused:** Rep. Jonathan Windy Boy (D)

**Members Absent:** None.

**Staff Present:** Sheri Heffelfinger, Legislative Branch  
Joan Reiman, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing & Date Posted: HB 365, HB 194  
Executive Action: HB 194 DO PASS AS AMENDED;  
HB 269 DO PASS AS AMENDED; HB 305  
DO PASS; HB 394 TABLED; HB 431  
TABLED; HB 450 DO PASS AS AMENDED;

**HEARING ON HB 365**

**Sponsor:** REP. GEORGE GOLIE, HD 44, South-Central Great Falls

**Opening Statement by Sponsor:**

REP. GOLIE said this revises restrictions on public employee political activity. The meat of the bill is p. 2, lines 6-7.

***{Tape: 1; Side: A; Approx. Time Counter: 0 - 2.4}***

**Proponents' Testimony:**

**Tony Lucas, Attorney, Great Falls,** said the federal system already has this prohibition. In the past two elections, Great Falls had questions, not of law, but of ethics. Billboards and TV ads endorsed candidates, and it was not clear if they were being endorsed by the County Attorney's office, or by him as a person. The Commissioner of Political Practice ruled it was just the person endorsing, but Mr. Lucas said voters thought it was the office. Peace officers being filmed in uniform, in the Courthouse endorsing someone, is misleading. People need faith in the process. The perception of cronyism destroys that, he said.

**Jerry Weisman, Great Falls,** said the judicial election was marred by these ads. He complained repeatedly to the Commissioner of Political Practice. It demeans the office to be have perceived corruption.

**Mary Lucas, Great Falls,** also testified in favor.

***{Tape: 1; Side: A; Approx. Time Counter: 2.4 - 12.3}***

**Opponents' Testimony:**

**Eric Feaver, MEA/MFT,** said if it passes, 16,000 public employees could not endorse anyone using their title. It is absurd and he said he is against it.

***{Tape: 1; Side: A; Approx. Time Counter: 12.3 - 14}***

**Informational Testimony:**

**Leroy Schram, Legal Counsel, University System,** said the practices that brought this about may be objectionable, but the bill goes beyond those and touches things Mr. Feaver mentioned. Those endorsing would have to have a disclaimer, which is not

practical, and even then may not get compliance. They need to focus closer on precisely what is objected to. The bill would ban well-accepted practices.

*{Tape: 1; Side: A; Approx. Time Counter: 14 - 18}*

**Questions from Committee Members and Responses:**

**REP. LEHMAN** asked **REP. GOLIE** if Cascade County had a mill levy for the regional jail. He replied that there was, and it failed.

**REP. LEHMAN** asked if the sheriff was interviewed by TV about the levy, would that be wrong by this bill. **The sponsor** replied that it was a good question, but he could not say. **REP. LEHMAN** asked, when a county official proposes to be in favor of a new jail, would they be offering a political view. **REP. GOLIE** said that was correct. **REP. LEHMAN** said this committee hears bills on retirement of MHP, FWP officers, etc, appearing in uniform; would that be forbidden? **The sponsor** said the bill's intention regards campaigns, not legislation.

**REP. LEHMAN** asked, if when appearing to committees, they are espousing political views. **REP. GOLIE** agreed they were. **REP. LEHMAN** asked if they would then be out of order. **REP. GOLIE** said the intent is not to have a public or state officer use their job title to endorse candidates. **REP. ROBERTS** asked **Mr. Lucas** if they wouldn't need the "wisdom of Solomon" to know when they have crossed that ethical line. **The sponsor** said the bill amends 2-2121, and is not intended to limit personal expression, just the use of the office to espouse it.

**REP. ROBERTS** said he fears end runs will be made to circumvent the law. **REP. GOLIE** said an individual has no ability to stop a reporter taking pictures, for instance a photo of someone speaking before a uniformed police group. That would not be a violation.

**REP. YOUNKIN** asked if the bill covered endorsements for ballot initiatives or referendums. He replied they could amend the language to make it more acceptable. She asked, "What about if the County Attorney were giving his opinion about a law?" **REP. GOLIE** said the intention is in regards using one's title to endorse a political candidate. **REP. YOUNKIN** said a paid ad could not have the title after the name.

**REP. BALLANTYNE** asked **REP. GOLIE** if it is possible to amend to include ballot issue. He agreed. **REP. BROWN** asked if the bill would prohibit Sens. Baucus or Burns having the Capitol in the background while endorsing. He answered affirmatively. **REP.**

**JENT** asked **Mr. Schram** if he agreed that both those cases have the right to speak their opinion. **Mr. Schram** agreed there are potential First Amendment problems.

**REP. LENHART** asked **Mr. Schram** how they would know when they had crossed that fine line. **Mr. Schram** said university officials struggled with that, and individuals just do not make it sound like are speaking for the university. **Mr. Schram** said, "We hire them to give their opinions, but they are [speaking] both [personally and from the office]." **REP. LEHMAN** asked if they could be in violation. **Mr. Schram** talked with **Jim Scheir**, Attorney for Campaign Practices, with no definitive answer. "That's the problem," said **Mr. Schram**. **REP. WAGMAN** asked Mr. Scheir about using one's uniform to endorse a race for sheriff, if the employee had bought the uniform. **Mr. Scheir** agreed that was legal.

*{Tape: 1; Side: A; Approx. Time Counter: 18 - 35.1}*

**Closing by Sponsor:**

The Sponsor thanked them for the excellent questions, and said the bill is long overdue. He clarified that questions about our U.S. Senators would be covered by federal law. He stated voters are apathetic, partly because of the problem he is trying to solve.

**CHAIRMAN BARRETT** turned the chair over to **VICE-CHAIR BROWN** for the next hearing.

**HEARING ON HB 194**

**Sponsor:** **REP. DEBBY BARRETT, HD 34, Southwestern Montana**

**Opening Statement by Sponsor:**

**REP. BARRETT** brought this bill by request of the Secretary of State, to makes that office more responsive. The Bureau has implemented 45 recommendations of a third party study on process re-engineering. Changes have been approved by two Interim committees. This bill is the last part of the process to eliminate duplications. She gave out Amendments.

**EXHIBIT (sth27a01)**

*{Tape: 1; Side: A; Approx. Time Counter: 38 - 44.6}*

**Proponents' Testimony:**

**Pat Haffey, Deputy for Business Services, Secretary of State,** said they tried to make it easier for businesses to register, and to simplify, clarify, and add consistency. She told of frustrating duplication and unnecessary steps of past practices. Her handout explains the changes. There will be an amendment, as they need the complete business address.

**EXHIBIT (sth27a02)**

**Aidan Myhre, Montana Chamber of Commerce,** supports.

**Riley Johnson, National Federation of Independent Business,** supports.

**Russ Ritter, Montanans for Responsible Energy Development,** also supports.

*{Tape: 1; Side: A; Approx. Time Counter: 44.6 - 59.5}*

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**REP. ROBERTS** asked **Ms. Haffey** where they would send business registrations if the owner were out of country. **Ms. Haffey** said they change addresses for snowbirds, so documents are forwarded. **REP. BROWN** asked when a limited liability or corporate name has one address, but there are multiple owners, to whom do they send the annual report. **Ms. Haffey** said they send multiple copies to one agent and they distribute it.

**REP. BALLANTYNE** asked her to clarify about using a fictitious name. She replied that word is misleading. When foreign corporations want a name, but that name is already registered, they have to do business under a "fictitious" name.

*{Tape: 1; Side: A; Approx. Time Counter: 59.5 - 66}*

*{Tape: 1; Side: B; Approx. Time Counter: 0 - 2.5}*

**Closing by Sponsor:**

**REP. BARRETT** said this is an important office, sending over 56,000 business registration annual reports.

*{Tape: 1; Side: B; Approx. Time Counter: 2.5 - 3.5}*

**EXECUTIVE ACTION ON HB 305**

**Motion:** REP. BROWN moved HB 305 DO PASS.

**Discussion:**

REP. BROWN explained vacancies filled by another do not count toward term limits. REP. ROBERTS said he could have been appointed but was advised not to take it. REP. B. OLSON said he had the same experience.

**Vote:** On a voice vote, motion carried 19-0. REP. WINDY BOY voted by proxy.

*{Tape: 1; Side: B; Approx. Time Counter: 4.9 - 6}*

**EXECUTIVE ACTION ON HB 394**

**Motion:** REP. BROWN moved HB 394 DO PASS.

**Discussion:**

REP. JENT said he is against limiting term limits for justices. The way it is written, the current term is included even if they are appointed. The Supreme Court is a full-time job. Justices have to buy a house in Helena, give up their law practice; it's a career-ending move. If appointed to fill one or two years of another's term, they can only serve one more eight-year term. The State Bar opposes this. SB 178, which would have done something similar died in committee. Editorial statements are not appropriate to a constitutional amendment. REP. B. OLSON is also against it; he said, "The best term limits are the voters." REP. DICKENSON concurred, as did REP. BALLANTYNE.

**Vote:** On a roll call vote, motion failed 5-14. Voting Aye were CHAIRMAN BARRETT, REPS. BROWN, A. OLSON, ROBERTS, and SCHRUMPF. REPS. SMITH and WINDY BOY voted by proxy.

**Motion/Vote:** REP. A. OLSON moved to TABLE HB 394 AND REVERSE THE VOTE. Motion carried 14-5. Voting No were CHAIRMAN BABBETT, REPS. BROWN, A. OLSON, ROBERTS and SCHRUMPF. REPS. SMITH and WINDY BOY voted by proxy.

*{Tape: 1; Side: B; Approx. Time Counter: 6 - 12}*

**EXECUTIVE ACTION ON HB 431**

**Motion:** REP. BROWN moved HB 431 DO PASS.

**Discussion:**

REP. BROWN said the last three to four years, the Guard said they would put the property on the market and they didn't. She voted no last time and is still against. The resort tax in Whitefish raises \$1 million/year; the city can afford to buy the property. She passed out fact sheets. REP. BECKER asked if Whitefish wanted a cheaper price. CHAIRMAN BARRETT said, "Yes." Ms. Heffelfinger clarified, the law does not require the Guard to sell at market value. REP. B. OLSON said sponsor wants to go to the Land Board to plead for a good price. CHAIRMAN BARRETT said the bill does not change statute.

REP. JENT had problems with the technical notes not making sense. "The city should get the property," he said, "the question is how much to pay." He asked REP. YOUNKIN if the Guard would use the proceeds to pay off the bond. Ms. Heffelfinger clarified that whatever they get would not pay off the bond. REP. WAGMAN asked if the Guard can sell under market price. REP. BROWN said the city re-zoned to agricultural, making a lower price more fair. REP. HURWITZ is against; the building is usable. REP. BROWN asked if this committee can help the process and tell the Guard to sell the property. CHAIRMAN BARRETT did not know. REP. SMITH said the Guard would not sell the Poplar armory and it even cost them \$500,000 to tear it down, but the Guard should sell this armory for fair market price. REP. BALLANTYNE said the proceeds can pay off bonds for the Guard.

**EXHIBIT**(sth27a03)

**EXHIBIT**(sth27a04)

**Vote:** On a roll call vote, motion failed 5-14. Voting aye were REPS. JENT, DICKENSON, BERNIE OLSON, ROBERTS & YOUNKIN. REP. WINDY BOY voted by proxy.

**Motion/Vote:** REP. YOUNKIN moved to REVERSE THE VOTE AND TABLE HB 431. The motion carried 14-5. Voting no were REPS. JENT, DICKENSON, BERNIE OLSON, ROBERTS & YOUNKIN. REP. WINDY BOY voted by proxy.

*{Tape: 1; Side: B; Approx. Time Counter: 12 - 35.6}*

EXECUTIVE ACTION ON HB 450

Motion: REP. JENT moved HB 450 DO PASS.

Motion: REP. JENT moved AMENDMENTS (45001.av1) to HB 450.

Discussion:

REP. JENT explained the amendment. REP. YOUNKIN said some filing fees have actually gone up.

Vote: On a voice vote, motion to amend HB 450 carried 19-0.  
REP. WINDY BOY voted by proxy.

Motion: REP. A. OLSON moved HB 450 DO PASS AS AMENDED.

Discussion:

CHAIRMAN BARRETT said this raises fees and some consider this a tax, but it is justifiable.

Vote: On a voice vote, motion carried 19-0. REP. WINDY BOY voted by proxy.

*{Tape: 1; Side: B; Approx. Time Counter: 35.6 - 42}*

EXECUTIVE ACTION ON HB 365

REP. DICKENSON will talk to sponsor REP. GOLIE about amendments.

EXECUTIVE ACTION ON HB 194

Motion: REP. YOUNKIN moved HB 194 DO PASS.

Motion/Vote: REP. YOUNKIN moved AMENDMENTS to HB 194. On a voice vote, motion to amend carried 19-0. REP. WINDY BOY voted by proxy.

Motion/Vote: REP. A. OLSON moved HB 194 DO PASS AS AMENDED.

Vote: On a voice vote, motion carried 19-0. REP. WINDY BOY voted by proxy.

*{Tape: 1; Side: B; Approx. Time Counter: 42 - 47}*



**EXECUTIVE ACTION ON HB 120**

**Motion:** REP. A. OLSON moved HB 120 DO PASS

**Motion:** REP. A. OLSON moved CONCEPTUAL AMENDMENTS to HB 120.

**Discussion:**

REP. A. OLSON said to cross out "acting" on line 18. REP. LEHMAN said it is a friendly amendment. REP. JENT said they need to resolve definitions and actuarial soundness; they need a substitute amendment regarding funding. He wanted to hold off and do both at once.

**Informational Witness Cathy McGowan, Montana Sheriffs and Peace Officers Association**, was called. She said the real issue is that sheriffs do think detention officers belong in the sheriff's retirement, but other people do not.

**Discussion:**

REP. LEHMAN said of the fiscal note, counties would have major tax increases. REP. A. OLSON said the money would come from sheriffs' existing budgets. REP. BROWN asked if the retirement incentive or pay were the real issue.

REP. LENHART disagreed with her implication; the incentive is what they want. **Informational Witness Melanie Symons, Legal Counsel, Public Employees Retirement Board**, was called. She said PERB has a three-member legislative committee. The sheriffs came to talk to them. The committee does not believe detention officers belong with a sheriff's retirement, but actuarial is a real problem. The full Board does not meet until February 27, 2003.

REP. DICKENSON asked if the fiscal note assumed all the detention officers would join if they could. Ms. Symons replied affirmatively. REP. DICKENSON said it seems a lot would not. Ms. Symons said the average years of service were 4.7, so it would be very expensive for them.

REP. BALLANTYNE asked Ms. Symons to clarify the definition of detention officer. She replied she could not. REP. WAGMAN said he was concerned about the cost to the state. Ms. Symons said there would be no state costs; it is the only public safety occupation with no cost to the state for retirement. REP. WAGMAN said he talked to his sheriff and County Commissioner and they urged support. REP. ROBERTS said 31 counties have these

officers, with the six largest counties having over one-half of them. Each of the six largest counties would pay \$23,000, with the other 25 paying an average of \$5,500. If the officers stay, it saves turnover costs to the county. **Ms. Symons** said Sheriff Cashell agreed with that. **REP. SMITH** told Ms. McGowan that Ravalli does not have high turnover but still supports this. He noted that 16 years ago, jail guards were classified as "secretaries." **REP. A. OLSON** asked how many on the PERB are opposed. **Ms. Symons** said it was a consensus. **REP. LENHART** said, he thought only one was against. **Ms. Symons** said, he has a strong voice. **REP. DICKENSON** said detention officers can turn lives around. The next session can fix any actuarial concerns.

**REP. A. OLSON** withdrew the motion.

{Tape: 1; Side: B; Approx. Time Counter: 47 - 66}

{Tape: 2; Side: A; Comments: 17.6}

#### EXECUTIVE ACTION ON HB 269

Motion: **REP. A. OLSON** moved HB 269 DO PASS.

Motion: **REP. A. OLSON** moved to **AMEND HB 269 (026901.ash)**

#### Discussion:

**REP. A. OLSON** said they changed the previous amendment. **REP. GIBSON** asked why they took out the word budget; he replied it was a political statement. **REP. LEHMAN** disagreed; he said it was to let the Fire Marshall off the hook. **REP. WAGMAN** was not sure if the Fire Marshall would agree with taking oil & gas wells off the inspection list. If public buildings are not inspected that year and someone sued, other inspectors would testify that national standards were not met. **REP. A. OLSON** said the American Petroleum Industry governs oil & gas well safety. **REP. WAGMAN** said the state is not applying the national fire code. **REP. JACOBSON** said standards are covered by Department of Labor, building codes. **REP. A. OLSON** added that electrical contractors also are covered.

**REP. HURWITZ** asked, what if oil wells are in school yards. **REP. WAGMAN** said the budget issue is still not resolved.

Vote: On a voice vote, **AMENDMENTS** carried 15-4. Voting no were **REPS. JENT, LEHMAN, SMITH & WINDY BOY**. **REP. WINDY BOY** voted by proxy.

**Motion:** REP. A. OLSON moved HB 269 DO PASS AS AMENDED.

**Discussion:**

REP. JENT asked REP. WAGMAN if there was a problem with reporting. REP. WAGMAN said, "No, they used national reporting now." REP. JENT said he still has problems with the bill. He felt they were taking duties away from the State Fire Marshall.

**Motion:** REP. BROWN moved to AMEND HB 269 (02690.apm).

**Discussion:**

REP. BROWN said the sponsor's motive was cleanup language.

Ms. Heffelfinger clarified the amendment language.

**Vote:** On a voice vote, motion to AMEND (02690.apm) carried 19-0. REP. WINDY BOY voted by proxy.

**Motion:** REP. YOUNKIN moved HB 269 DO PASS AS AMENDED.

**Discussion:** REP. WAGMAN said public occupancies are not being inspected; instead, they will target hazards.

**Vote:** On a roll call vote, motion carried 14-5. Voting no were REPS. BROWN, JENT, DICKENSON, LEHMAN and WINDY BOY. REP. WINDY BOY voted by proxy.

***{Tape: 2; Side: A; Approx. Time Counter: 17.6 - 39}***

REP. B. OLSON gave out a document pertaining to HB 382, heard earlier this week. Committee will wait until REP. WINDY BOY is present to do executive action on it.

**EXHIBIT** (sth27a05)

**ADJOURNMENT**

Adjournment: 10:55 A.M.

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REP. DEBBY BARRETT, Chairman

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JOAN REIMAN, Secretary

DB/JR

**EXHIBIT (sth27aad)**